

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

~~June 10, 2021~~~~Agenda ID #19607~~~~**Ratesetting**~~

TO PARTIES OF RECORD IN APPLICATION 20-02-009:

~~This is the proposed decision of Administrative Law Judge Elaine Lau. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's July 15, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.~~

~~Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.~~

~~The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).~~

~~/s/ ANNE E. SIMON~~

~~Anne E. Simon~~

~~Chief Administrative Law Judge~~

AES:gp2

Attachment

Decision **PROPOSED DECISION OF ALJ LAU** (Mailed 6/10/2021)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Record Period January 1 Through December 31, 2019. (U39E)

Application 20-02-009

**DECISION RESOLVING PHASE ONE OF PACIFIC GAS AND ELECTRIC  
COMPANY'S ERRRA COMPLIANCE APPLICATION FOR THE 2019  
RECORD YEAR**

## TABLE OF CONTENTS

Title	Page
DECISION RESOLVING PHASE ONE OF PACIFIC GAS <del>&amp;</del> <u>AND</u> ELECTRIC COMPANY'S <u>ENERGY RESOURCES RECOVERY ACCOUNT</u> (ERRA) COMPLIANCE APPLICATION FOR THE 2019 RECORD YEAR	2
Summary	2
1. Procedural Background	3
2. Issues considered in Phase One	5
3. Settlement Agreement	6
4. Standard of Review	<del>9</del> <u>8</u>
4.1. ERRA Compliance Review	9
4.2. Reviewing Settlement Agreements	10
5. Discussion	<del>11</del> <u>10</u>
5.1. PG&E is in Compliance with ERRA requirements.	<del>11</del> <u>10</u>
5.2. The Settlement Agreement is reasonable and approved.	11
5.2.1. The Settlement Agreement is Reasonable in Light of the Record as a Whole.	11
5.2.2. The Settlement Agreement is Consistent with Law and prior Commission Decisions.	13
5.2.3. The Settlement Agreement is in the Public Interest	<del>15</del> <u>14</u>
6. Contested Issues	15
6.1. Retained RPS Adjustment	<del>16</del> <u>15</u>
6.2. Vintage assignments of amended Power Purchase Agreements	18
7. Comments on Proposed Decision	<del>21</del> <u>20</u>
8. Assignment of Proceeding	<del>21</del> <u>22</u>
Findings of Fact	<del>21</del> <u>23</u>
Conclusions of Law	<del>25</del> <u>26</u>
ORDER	<del>26</del> <u>27</u>

**DECISION RESOLVING PHASE ONE OF PACIFIC GAS AND ELECTRIC  
COMPANY'S ENERGY RESOURCES RECOVERY ACCOUNT (ERRA)  
COMPLIANCE APPLICATION FOR THE 2019  
RECORD YEAR**

**Summary**

This decision finds that Pacific Gas and Electric Company (PG&E), during the 2019 record year, complied with all the requirements that the Commission reviews during the Energy Resources Recovery Account (ERRA) compliance process. Specifically, during the 2019 record year, PG&E 1) prudently administered its energy resource contracts, 2) prudently managed its utility owned generation facilities and dispatched energy in a least cost manner, and 3) implemented its Bundled Procurement Plan in procuring greenhouse gas (GHG) compliance instruments and in procuring and selling resource adequacy. In addition, PG&E has also demonstrated that, except for the account adjustments expressly provided in the parties' settlement agreement, the entries PG&E recorded in the ERRA and Portfolio Allocation Balancing Account (PABA), as well as other balancing and memorandum accounts reviewed in this Application, are reasonable, appropriate, and accurate.

This decision approves a Settlement Agreement entered by all the parties that actively participated in Phase One of this proceeding. The Settlement Agreement resolves all but two contested issues between the parties. Except for the terms specified in the Settlement Agreement, the settling parties request that the Commission approve PG&E's unopposed proposals. This decision approves the unopposed relief that PG&E is requesting in Phase One, which includes a recovery of \$3.996 million in revenue requirement for seismic study costs recorded in the Diablo Canyon Seismic Study Balancing Account.

For the two contested issues, this decision finds that PG&E shall 1) use the same methodology approved in D.20-02-047 (2020 ERRA decision) to calculate

the Retained Renewables Portfolio Standard (RPS) adjustment and update the RPS adjustment with actual 2019 recorded sales data, and 2) retain the same Power Charge Indifference Adjustment (PCIA) vintage years for the power purchase agreements PG&E amended in 2019.

This decision concludes Phase One of this proceeding, but the proceeding remains open for the Commission to consider issues in Phase Two.

## **1. Procedural Background**

On February 28, 2020, PG&E submitted Application (A.) 20-02-009, *Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Record Period January 1 Through December 31, 2019* (Application). In the Application, PG&E requests that the Commission find that, during the 2019 record year, 1) PG&E complied with the Bundled Procurement Plan,<sup>1</sup> with respect to fuel procurement, administration of power purchase contracts, GHG compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources, 2) PG&E managed its utility-owned generation facilities reasonably, and 3) the entries PG&E recorded in the ERRA and the PABA, as well as other balancing accounts and memorandum accounts, are reasonable and consistent with applicable tariffs and Commission directives.<sup>2</sup>

<sup>1</sup> PG&E's most recent Bundled Procurement Plan was approved in D.15-10-031 and was subsequently modified in Resolution E-4998.

<sup>2</sup> These accounts are the Diablo Canyon Seismic Studies Balancing Account, the Green Tariff Shared Renewables Memorandum Account, Disadvantaged Communities Single Family Solar Affordable Homes Memorandum Subaccount, Disadvantaged Communities Single Family Solar Affordable Homes Balancing Account, Portfolio Allocation Balancing Account (PABA), and Green Tariff Shared Renewables Balancing Account.

PG&E is also requesting to recover the balances recorded in the balancing and memorandum accounts being reviewed in this Application, specifically the \$3.996 million in revenue requirement for seismic study costs recorded in the Diablo Canyon Seismic Studies Balancing Account.

On April 2, 2020, protests were timely filed by two parties: 1) Public Advocates Office (Cal Advocates) and 2) East Bay Community Energy, Marin Clean Energy, Peninsula Clean Energy, Pioneer Community Energy, San Jose Clean Energy,<sup>3</sup> Silicon Valley Clean Energy, and Sonoma Clean Power (collectively, the Joint Community Choice Aggregators or JCCAs). PG&E timely filed a response to the protests on April 13, 2020.

A telephonic prehearing conference was held on May 12, 2020 to discuss the scope of issues, the need for hearings, and the proceeding schedule. The assigned Commissioner issued a Scoping Memo and Ruling (Original Scoping Memo) on June 19, 2020. The Original Scoping Memo stated that the Commission was considering input from parties in the ERRRA compliance proceedings of Southern California Edison and San Diego Gas & Electric Company before determining whether to include issues related to PG&E's 2019 Public Safety Power Shutoff (PSPS) events in the scope of the proceeding. On August 14, 2020, the assigned Commissioner issued an Amended Scoping Memo and Ruling (Amended Scoping Memo). The Amended Scoping Memo bifurcated the proceeding into two phases (Phase One and Phase Two) and amended the scope of issues such that the issues in the Original Scoping Memo are considered in Phase One of this proceeding and issues related to PG&E's 2019 PSPS events are considered in Phase Two of this proceeding.

<sup>3</sup> On June 19, 2020, City of San Jose, Administrator of San Jose Clean Energy filed a Notice of Party Name Change from San Jose Clean Energy to City of San Jose, Administrator of San Jose Clean Energy.

The Utility Reform Network (TURN) filed a motion for party status on June 5, 2020, stating that it intends to examine issues related to PG&E's 2019 PSPS events. TURN's motion for party status was granted in an E-mail Ruling issued by Administrative Law Judge (ALJ) Lau on June 5, 2020. The Amended Scoping Memo determined that the issues TURN intends to examine, which are issues related to PG&E's 2019 PSPS, will be considered in Phase Two of the proceeding. TURN has not actively participated and did not file any testimony in Phase One of this proceeding.

On October 22, 2020, PG&E, Cal Advocates and the JCCAs, which are all the parties that actively participated in Phase One, filed a Joint Motion for adoption of a Settlement Agreement.

## **2. Issues considered in Phase One**

As determined in the Amended Scoping Memo, the following are the issues considered in Phase One of this proceeding:

1. Whether PG&E, during the record period, prudently administered and managed the following, in compliance with all applicable rules, regulations and Commission decisions, including but not limited to Standard of Conduct No. 4 (SOC 4):
  - a. Utility-Owned Generation facilities;
  - b. Qualifying Facilities (QF) Contracts and Non-QF Contracts.

If not, what adjustments, if any, should be made to account for imprudently managed or administered resources?

2. Whether PG&E achieved least cost dispatch of its energy resources and economically-triggered demand response programs pursuant to SOC 4;
3. Whether the entries recorded in the ERRA and the PABA are reasonable, appropriate, accurate, and in compliance with Commission decisions;
4. Whether PG&E's GHG compliance instrument procurement complied with its Bundled Procurement Plan;

5. Whether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan;
6. Whether the costs incurred and recorded in the following accounts are reasonable and in compliance with applicable tariffs and Commission directives:
  - a. Diablo Canyon Seismic Studies Balancing Account;
  - a. Green Tariff Shared Renewables Memorandum Account;
  - b. Green Tariff Shared Renewables Balancing Account;
  - c. Disadvantaged Communities Single Family Solar Affordable Homes Memorandum Account; and
  - d. Disadvantaged Communities Single Family Solar Affordable Homes Balancing Account.
7. Whether there are any safety considerations raised by this application.

### **3. Settlement Agreement**

PG&E, Cal Advocates and the JCCAs (Settling Parties) entered into a Settlement Agreement. They are the only parties that submitted testimony and actively participated in Phase One of this proceeding.<sup>4</sup> The Settlement Agreement is unopposed.

The Settlement Agreement resolves all but two disputed issues in Phase One. Aside from the terms specified in the Settlement Agreement, the Settling Parties request that the Commission approve any undisputed proposals or relief PG&E is requesting.<sup>5,6</sup>

The Settlement Agreement contains seven substantive sections: 1) Information Required to Support PG&E's Future ERRA Compliance Applications, 2) Bundled Procurement Plan, Appendix S, 3) Incorrect Vintage Assignments, 4)

<sup>4</sup> TURN is a party to this proceeding and intends on intervening only on issues that are being considered in Phase Two of the proceeding. TURN did not actively participate and did not submit testimony in Phase One of the proceeding.

<sup>5</sup> PG&E has modified some of its requests in its Rebuttal Testimony. For these issues, the Rebuttal Testimony represents PG&E's final positions.

<sup>6</sup> Settlement Agreement at 1.



Exhibits/Record, 5) Least Cost Dispatch, 6) GHG Compliance, and 7) Operation of PG&E's Utility Owned Generation.

The first section, Information Required to Support PG&E's Future ERRA Compliance Applications, contains terms in which PG&E commits to provide additional, specific information requested by the JCCAs in future ERRA compliance applications. The additional information that PG&E agrees to provide include data and workpapers on topics such as Portfolio Allocation Balancing Account (PABA) entries, Electric History sheet data, monthly California Independent System Operator (CAISO) data, billed revenue and retail sales volumes, sold and unsold Renewables Portfolio Standard (RPS) products by resource adequacy resources and balancing account, ERRA-related advice letters PG&E filed during the record year, and specific GHG emissions calculations. PG&E also agrees to simplify the presentation of its data in future ERRA compliance filings.

The second section, Bundled Procurement Plan, Appendix S, is an agreement between PG&E and the JCCAs to engage in discussions about Resource Adequacy solicitations that are governed by Appendix S of PG&E's Bundled Procurement Plan. PG&E also agrees to propose revisions to Appendix S in the future if it is appropriate.

In the third section, Incorrect Vintage Assignments, PG&E agrees to implement bill credits for residential, commercial and industrial Community Choice Aggregation customers who were assigned an incorrect vintage.

The fourth section, Exhibits/Records, is an agreement between PG&E and the JCCAs to admit exhibits in which the JCCAs identifies accounting errors in the PABA. PG&E agrees to make these accounting adjustments to the PABA.

In the fifth section, Least Cost Dispatch, PG&E agrees to Cal Advocates' request to participate in a workshop with all the other investor-owned utilities to

develop and standardize renewable and energy storage resource reporting requirements.

The sixth section, GHG Compliance, is an agreement between PG&E and Cal Advocates to request that the Commission consider revisions to PG&E's GHG procurement plan in the next Integrated Resources Planning proceeding. In addition, PG&E agrees to include additional GHG information in PG&E's future ERRA compliance applications.

Lastly, the seventh section, Operation of PG&E's Utility Owned Generation, states that Cal Advocates withdraws its assertion that PG&E failed to provide adequate support for the forced outage at PG&E's Pit 5, Unit 4 hydro facility and does not object to PG&E's request to recover \$163,208 of replacement power costs associated with the forced outage.

#### **4. Standard of Review**

The Commission evaluates this Application under the following standards: 1) whether PG&E meets the standard for compliance under the ERRA regulatory process, and 2) whether the Settlement Agreement proposed by the parties meets the standard for approval under Rule 12.1 of the Rules of Practice and Procedure.

##### **4.1. ERRA Compliance Review**

The ERRA, authorized by Public Utilities Code Section 454.5(d) and Commission Decision (D.) 02-10-062, allows regulated energy utilities to recover power procurement costs for fuel and purchased power not already authorized to be recovered in rates. This balancing account tracks "the differences between recorded revenues and costs incurred pursuant to an approved procurement plan" and is reviewed by the Commission.<sup>7</sup>

The ERRA regulatory process includes an annual compliance proceeding and an annual forecast proceeding. In the ERRA compliance proceeding, the

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<sup>7</sup> Public Utilities Code Section 454.5(d)(3).

Commission is required to perform a compliance review to consider whether a utility has complied with all applicable rules, regulations, opinions, and laws in implementing the utility's most recently approved procurement plan, administering its energy resource contracts, and managing its utility owned generation.<sup>8</sup> As part of the ERRR compliance reviews, the Commission also considers whether the utility has prudently administered its contracts and generation resources and dispatched energy in a least cost manner in accordance with SOC 4.<sup>9</sup> SOC 4 provides: "The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner."<sup>10</sup> Prudent contract administration includes administration of all contracts within the terms and conditions of those contracts and the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs. Least Cost Dispatch means the most cost-effective mix of total resources is used, thereby minimizing the cost of delivering electric services. In addition, in ERRR compliance reviews, the Commission also considers whether entries the utility recorded in the ERRR and PABA are reasonable, appropriate, accurate, and in compliance with Commission decisions.<sup>11</sup>

As the applicant, PG&E has the burden of affirmatively establishing by a preponderance of the evidence that it is entitled to the Commission's actions and relief that it is requesting.

<sup>8</sup> Public Utilities Code Section 454.5(d)(2).

<sup>9</sup> See D.15-05-006, Ordering Paragraph 1 and Ordering Paragraph 3.

<sup>10</sup> D.02-10-062 at 74 (Conclusion of Law 11).

<sup>11</sup> See D.18-10-019, Ordering Paragraph 8.

#### **4.2. Reviewing Settlement Agreements**

With respect to any settlement agreement, pursuant to Rule 12.1 of the Rules of Practice and Procedure, we will only approve settlements that are reasonable in light of the record as a whole, consistent with the law, and is in the public interest. And, in order to consider the proposed Settlement Agreement in this proceeding as being in the public interest, we must be convinced that the parties have a sound and thorough understanding of the application and all of the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement.

### **5. Discussion**

#### **5.1. PG&E is in Compliance with ERRA requirements.**

After reviewing the parties' extensive testimony, workpapers, briefs, and settlement agreement, we find that PG&E has demonstrated that, for the 2019 record year, it complied with all the requirements that are reviewed during the ERRA compliance proceedings. Specifically, during the 2019 record year, PG&E 1) prudently administered its energy resource contracts, 2) prudently managed its utility owned generation facilities and dispatched energy in a least cost manner, 3) procured GHG compliance instruments in a manner that complies with its GHG Procurement Plan, as set forth in its Bundled Procurement Plan, and 4) procured and sold resource adequacy in a manner that complies with its Bundled Procurement Plan, Appendix S. Except for the account adjustments expressly provided in the Settlement Agreement, the entries PG&E recorded in the ERRA and PABA, as well as other balancing and memorandum accounts reviewed in this Application, are reasonable, appropriate, and accurate.

**5.2. The Settlement Agreement is reasonable and approved.**

We approve the Settlement Agreement because we find that the Settlement Agreement is reasonable in light of the whole record, consistent with law and prior Commission decisions, and in the public interest.

**5.2.1. The Settlement Agreement is Reasonable in Light of the Record as a Whole.**

We find that the Settlement Agreement is reasonable in light of the whole record. The Settlement Agreement has the unanimous sponsorship of all active parties in Phase One of this proceeding: PG&E, Cal Advocates, and the JCCAs. The Settling Parties are knowledgeable and experienced in the issues examined. They are fairly representative of the interests that would be affected in this phase of the proceeding. Cal Advocates “represent and advocate on behalf of the interests of public utility customers...to obtain the lowest possible rate for service consistent with reliable and safe service levels.” The JCCAs represent the interests of local communities that have Community Choice Aggregators.

The Settling Parties reached agreement after submission of lengthy testimony, extensive discovery, careful analysis of issues, and settlement discussions. The extensive evidentiary record contains sufficient information for the Commission to determine the reasonableness of the Settlement Agreement.

The Settlement Agreement demonstrates reasonable compromises between the parties’ initial positions on the issues considered in the settlement. These compromises include 1) PG&E’s agreement to streamline and provide additional information in future ERRA Compliance proceedings to increase transparency of PG&E’s data, 2) PG&E’s agreement to collaborate with parties on issues considered in future ERRA proceedings, such as developing standardized renewable and energy storage requirements, re-examining Resource Adequacy solicitations that are governed by Appendix S in PG&E’s

Bundled Procurement Plan, and reconsidering PG&E's GHG Procurement Plan as part of its Bundled Procurement Plan, 3) Cal Advocates' agreement to PG&E's recovery of the replacement power costs PG&E incurred due to the forced outage at the Pit 5, Unit 4 hydro facility, and 4) PG&E's agreement to a number of adjustments to the PABA that were proposed by the JCCAs.<sup>12</sup>

### **5.2.2. The Settlement Agreement is Consistent with Law and prior Commission Decisions.**

We find that the terms of the Settlement are consistent with statute and prior Commission decisions.

The statutes applicable to this proceeding include Public Utilities Code (Pub. Util. Code) Section 451 and Pub. Util. Code Section 454. Pub. Util. Code Section 451 states that "all charges demanded or received by any public utility...shall be just and reasonable." Pub. Util. Code Section 454 authorizes the Commission to review the utility's compliance with approved procurement plans

<sup>12</sup> In reply testimony, PG&E agreed to the following PABA adjustments, as proposed by the JCCAs: 1) the reversal of the \$38.3 million balance in the Power Charge Indifference Adjustment (PCIA) Subaccount to prevent double counting of PCIA revenue shortfall from January 1 to July 1, 2019; 2) an adjustment of \$4.5 million in the PABA of Unsold Resource Adequacy (RA) to Retained RA because PG&E used PCIA-eligible resources to provide replacement RA capacity for ERRA resources unavailable due to planned outages; 3) an addition to the PABA for the Retained RA value to the PABA for RA capacity in a Southern California Edison Local Area that PG&E used to meet its capacity obligations for bundled customers in 2019 but failed to record; 4) a correction of \$16.8 million associated with the renewable energy credits (REC) sales with 2018 deliveries incorrectly recorded to the PABA, rather than the ERRA, in 2019; 5) a reduction to PABA of \$18.0 million to correct balancing accounts for CAISO settlements; 6) an adjustment credit of \$1.2 million to recognize the interest credits for periods prior to first recording Retained RA and RPS values to the PABA in June 2019; and 7) an adjustment for incorrect Community Choice Aggregators (CCA) customer vintage assignments. See *Joint Motion of Pacific Gas and Electric Company, the Public Advocates Office at the California Public Utilities Commission and the Joint Community Choice Aggregators for Adoption of Settlement Agreement* at 5-6. The settlement resolved the following PABA-related issues between PG&E and the JCCAs: 1) whether PG&E's RA solicitations complied with its Bundled Procurement Plan, Appendix S; 2) a proposed reduction of \$33.6 million to the PABA for "unsupported" measures of retail sales volumes; 3) data necessary to provide greater transparency; and 4) mechanisms for making bill adjustments for incorrect CCA customer vintage assignments. See *ibid.* at 6-7.

and administration of procurement-related contracts and to review the utility's power procurement balancing accounts. Pub. Util. Code Section 454 also prevents a change in public utility rates unless the Commission finds such an increase justified.

The extensive record developed in this proceeding, including the parties' testimony, workpapers, and discovery responses, has provided sufficient showing that the rate changes resulting from the settled terms are just and reasonable and are consistent with Pub. Util. Code Sections 451 and 454. PG&E provided extensive testimony on its least cost dispatch and demand response operations, management of its utility owned generation, costs recorded in the Diablo Canyon Seismic Studies Balancing Account, fuel procurement activities, greenhouse gas compliance instrument procurement activities, procurement and sales of Resource Adequacy products, contract administration practices, costs recorded in the Green Tariff Shared Renewables Memorandum Account and the Green Tariff Shared Renewables Balancing Account, entries recorded in the Portfolio Allocation Balancing Account and the Energy Resource Recovery Account, and the costs recorded pertaining to the Disadvantaged Community-Single-Family Affordable Solar Housing during the 2019 record year. Cal Advocates and the JCCAs, after extensive review and audit of the information PG&E presented in testimony and discovery responses, have agreed that the settled terms are reasonable.

Even though the Settlement Agreement contains prospective terms, particularly the provision for PG&E to provide and streamline additional information in future ERRA compliance proceedings, the Commission has approved prospective terms in PG&E's past ERRA Compliance proceedings. Thus, the prospective terms contained in the Settlement Agreement are consistent with prior Commission precedent and comply with all applicable statutes.

In addition, the Settlement Agreement contains sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties and their interests and obligations.

### **5.2.3. The Settlement Agreement is in the Public Interest**

We find that the Settlement Agreement is in the public interest.

The Settlement Agreement allows PG&E to recover power procurement costs at just and reasonable rates that are sufficient for PG&E to maintain safe and reliable service.

The Settlement Agreement allows more future collaboration between the parties to increase transparency and reporting of PG&E's procurement activities. PG&E agrees to provide more information and data to support its future ERRA Compliance applications. PG&E and other parties agree to collaborate, engage in further discussions, and participate in future workshops on future ERRA-related activities and reporting requirements.

Finally, the Settlement Agreement is in the public interest because it avoids extensive litigation and conserves Commission resources through resolving most of the disputed issues in the proceeding. Because settlements conserve Commission resource and the resources of the parties, the Commission has historically favored settlements as a means of resolving contested issues if they are reasonable in light of the whole record.

## **6. Contested Issues**

The Settlement Agreement resolves all but two disputed issues. The JCCAs and PG&E contest the following two issues:

- 1) The correct accounting adjustments to the PABA for retained RPS resources per D.20-02-047 (2020 ERRA Forecast Decision), and
- 2) The Power Charge Indifference Adjustment (PCIA) vintage assignments of the four amended Power Purchase Agreements.

### **6.1. Retained RPS Adjustment**



D.20-02-047 (2020 ERRR Forecast Decision) determined that PG&E should not have used its banked renewable energy credits (RECs) to increase its REC generation beyond its compliance target in 2019.<sup>13</sup> Because PG&E used its banked RECs to increase its REC generation by the amount of renewables portfolio standard (RPS) resources PG&E offered for sale, D.20-02-047 determined that PG&E undercounted its 2019 Retained RPS resources and directed PG&E to transfer \$92.9 million from the PABA balance to the ERRR balance.<sup>14</sup> The \$92.9 million figure is the value of 5,650 gigawatt-hours (GWh) of retained RPS priced at the 2019 RPS adder of \$16.44. The decision calculated the retained RPS to be the difference between the annual RPS compliance target and the retained RECs.

PG&E, in its supplemental testimony, argues that the appropriate amount that should be transferred from the PABA to the ERRR should be \$69.3 million, and that the \$92.9 million figure ordered in the 2020 ERRR Forecast Decision is erroneous. PG&E argues that the \$92.9 million was calculated based on 5,650 GWh of retained RPS but that 1,437 GWh of this amount should not be included in the calculation. Omitting the 1,437 GWh from the calculation of Retained RPS, according to PG&E, results in a proposed adjustment of \$69.3 million. The JCCAs oppose PG&E's proposed adjustments, arguing that PG&E's proposal is contrary to the directives laid out in the 2020 ERRR Forecast Decision.

On March 30, 2020, PG&E filed an application for rehearing of the 2020 ERRR Forecast Decision, in which it contended that the \$92.9 million adjustment ordered in the Decision was erroneous. PG&E argued that the adjustment should be calculated by removing 1,437 GWh from retained RPS, and that the adjustment should therefore be \$69.3 million instead of \$92.8 million. On

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<sup>13</sup> D.20-02-047 at 15.

<sup>14</sup> D.20-02-047 at 13-16.

December 30, 2020, the Commission issued an Order Denying Rehearing of D.20-02-047, in which the Commission stated that the Decision did not err in its method of calculating the Retained RPS adjustment and reaffirmed the order for PG&E to transfer \$92.9 million, based on 5,650 GWh of forecasted Retained RPS, from the PABA to the ERRRA.<sup>15</sup>

The arguments PG&E has presented in this proceeding to contest the retained RPS adjustment calculations are similar to the arguments it made on the same matter in the application for rehearing. PG&E did not present any new arguments or evidence in this proceeding that convince us to deviate from the determination the Commission has made in the Order Denying Rehearing.

The JCCAs, in their testimony, argue that the correct adjustment should be \$95.3 million, which they calculated using actual 2019 recorded sales and the calculation method used in the 2020 ERRRA Forecast Decision. According to the JCCAs, the \$92.9 million figure determined in the 2020 ERRRA Forecast Decision was calculated using twelve months of sales in which sales for three of those months were forecasted. Based on the actual recorded bundled retail sales of 35,956 GWh over the twelve months of 2019, the JCCAs argue that the correct figure PG&E should transfer from the PABA to the ERRRA is \$95.3 million, in addition to any associated interests retroactive to the beginning of 2019.<sup>16,17</sup> In

<sup>15</sup> Order Denying Rehearing of D.20-02-047 at 6-7.

<sup>16</sup> *ibid.*

<sup>17</sup> The JCCAs calculated the \$95.3 million figure based on 11,146 GWh of Retained RPS. The JCCAs determined the Retained RPS amount by equating it to PG&E's 2019 annual RPS compliance target, which the JCCAs calculated based on PG&E's compliance target of 31 percent of sales. The 11,146 GWh of Retained RPS amount is the same figure used in the Order Denying Rehearing, which valued the Retained RPS at \$185 million, based on the RPS adder of \$16.44.

its rebuttal testimony, PG&E agrees that actual data should be used to calculate the Retained RPS adjustment.<sup>18</sup>

We agree with the JCCAs and PG&E that actual recorded sales should be used in determining the appropriate adjustment. We also agree that any associated interest should be transferred as well. Therefore, PG&E shall transfer \$95.3 million, including any associated interest retroactive to January 2019, from the PABA to the ERRA, as a result of updating the Retained RPS adjustment that was ordered in the 2020 ERRA Forecast Decision with actual 2019 recorded sales data.

## **6.2. Vintage assignments of amended Power Purchase Agreements**

In 2019, PG&E negotiated amendments to Power Purchase Agreements (PPAs) of four RPS projects: Recurrent Energy (RE) Gaskell West 3 (2017 vintage), RE Gaskell West 4 (2017 vintage), RE Gaskell West 5 (2017 vintage), and Java Solar (2016 vintage) (collectively, Amended PPAs). PG&E negotiated a price reduction of 10% in exchange for assuming the contracts during its bankruptcy. Other contract terms were amended as well, including a delayed commercial operation date, modified metering configurations, and a modified milestone schedule.<sup>19</sup> The Commission approved these amendments in Resolution E-5027 and Resolution E-5049 (Resolutions).

The JCCAs argue that the vintage year of the Amended PPAs, which are PCIA-eligible, should be changed to 2019, the year in which the contracts were renegotiated. The JCCAs assert that, because the amendments modified price, the amendments constitute a material change to the original terms of the contracts. Therefore, according to the JCCAs, the Amended PPAs are new

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<sup>18</sup> PG&E Rebuttal at 12-6.

<sup>19</sup> PG&E's Opening Brief at 2-3.

contractual commitments that implicate new customer cost responsibility.<sup>20</sup> In addition, the JCCAs assert that these contracts are not unavoidable and are not intended to benefit customers who departed prior to the renegotiation. For these reasons, according to the JCCAs, customers who departed prior to the renegotiation in 2019 should be not assigned the costs of the Amended PPAs.<sup>21</sup>

PG&E asserts that, in the Resolutions, the Commission had authorized PG&E to retain the existing vintages for the Amended PPAs. PG&E argues that, because the Resolutions approved the Amended PPAs' existing cost recovery mechanism, the Resolutions allowed PG&E to retain the existing cost responsibility determination and existing vintages for the contracts. PG&E states that the JCCAs received proper service of the advice letters in which PG&E sought approval of the contract amendments, but the JCCAs did not protest or request rehearing of the advice letters. PG&E asserts that, because the Commission has already approved the existing vintages for the Amended PPAs in the Resolutions, it is inappropriate to litigate this matter in this proceeding.

The JCCAs argue that this proceeding, and not the individual advice letter filings, is the appropriate forum for reviewing contract vintage reassignments. The JCCAs assert that the advice letter filings are appropriate to review the reasonableness of the underlying contractual terms but are not procedurally amenable to resolving fact-based questions that rely on confidential information related to vintaging because there is no formal discovery process and process to access confidential information such as having parties sign non-disclosure agreements.

The Resolutions approved PG&E's Advice Letter 5607-E and Advice Letter 5658-E, in which PG&E requested approval of the contract amendments as well

<sup>20</sup> JCCAs Opening Brief at 19-21.

<sup>21</sup> JCCAs' Reply Brief at 7-9.

as the cost recovery mechanism for the Amended PPAs. Specifically, in Advice Letter 5607-E, PG&E requests that the Commission approve “[t]he utility’s payments under the amended PV PPAs [to] continue to be recovered through PG&E’s Energy Resource Recovery Account and included in calculation of the PCIA.”<sup>22</sup> Similarly, in Advice Letter 5658-E, PG&E requests that the Commission approve “[t]he utility’s payments under the amended Java PPA [to] continue to be recovered through PG&E’s Energy Resource Recovery Account and included in calculation of the PCIA.”<sup>23</sup> The Resolutions approved both advice letters “without modification.”<sup>24</sup> In so doing, the Resolutions approved PG&E’s requested cost recovery mechanisms, which is to continue recovering the costs of the Amended PPAs through the ERRA and to include these costs in the calculation of the PCIA. Even though the specific terms regarding vintaging were not discussed, the Commission’s approval of the continuation of the cost recovery mechanism through the ERRA and PCIA assumes that PG&E would use the existing vintages for cost recovery. Because cost recovery for the Amended PPAs, as well as the related vintaging issues, were addressed in the Resolutions, it is not appropriate to address these issues in this current proceeding.

## 7. Comments on Proposed Decision

The proposed decision of ALJ Elaine Lau in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. ~~Comments were~~ The JCCAs and PG&E filed comments on \_\_\_\_\_, ~~and~~ June 30, 2021. Both parties then filed reply comments ~~were filed~~ on \_\_\_\_\_ by \_\_\_\_\_ July 6, 2021.

<sup>22</sup> PG&E’s Advice Letter 5607-E at 6.

<sup>23</sup> PG&E’s Advice Letter 5658-E at 6.

<sup>24</sup> Resolution E-5027, Ordering Paragraph 1; Resolution E-5049, Ordering Paragraph 1

In comments, the JCCAs request that, prospectively, the Commission review contract vintage issues in formal Commission proceedings, such as the ERRA compliance proceedings. The JCCAs argue that the advice letter process is inappropriate for addressing contract vintages, because the advice letter process constrains their opportunity to conduct discovery and does not afford them the due process rights of a full and fair hearing to litigate substantive issues. In response, PG&E argues that any changes to the contract approval process is outside the scope of this proceeding, particularly since such a change may affect the other two energy investor-owned utilities.

The issue of how the Commission should prospectively address contract vintages is outside the scope of the instant proceeding. The record has not been developed to address this issue. Furthermore, this issue may affect the vintaging processes for all the investor-owned energy utilities in the State, who are not parties. For these reasons, the Commission's currently open proceeding, Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment, R.17-06-026, is more appropriate for considering how the Commission should address contract vintages for the utilities in the future, and we intend to explore these matters in that proceeding.<sup>25</sup>

The JCCA's other comments regarding re-vintaging four of PG&E's amended PPAs reargue facts that the Commission has already considered.

In PG&E's comments to the proposed decision, PG&E requests that the proposed decision consider the issues in Phase Two to be moot after the issuance of D.21-06-014 (Order Instituting Investigation on the Commission's

<sup>25</sup> The Assigned Commissioner's Amended Scoping Memo and Ruling (R.17-06-026), issued on December 16, 2020, states that one of the issues that are within the scope of R.17-06-026 is "Should the Commission consider any other changes necessary to ensure efficient implementation of PCIA issues within ERRA proceedings?" See Assigned Commissioner's Amended Scoping Memo and Ruling (R.17-06-026) at 1.

Own Motion on the Late 2019 Public Safety Power Shutoff Events). Based on Ordering Paragraph 1 of D.21-06-014, which states that “Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E) must forgo collection in rates from customers of all authorized revenue requirement equal to estimated unrealized volumetric sales and unrealized revenue resulting from Public Safety Power Shutoff (PSPS) events after the effective date of this decision,”<sup>26</sup> PG&E argues that the Commission has determined for the review of unrealized volumetric sales and revenue resulting from PSPS events to occur prospectively after the issuance of D.21-06-014. PG&E proposes to eliminate Phase Two and close the proceeding.

D.21-06-014 does not foreclose the Commission from considering the issues that have been scoped for Phase Two of this proceeding. The issue of whether PG&E can adjust or collect its revenue requirement to account for unrealized sales during PSPS events in 2019 has been within the scope of Phase Two of this proceeding.<sup>27</sup> Even as the Commission disallows PG&E from collecting revenues related to PSPS undercollections prospectively after the issuance of D.21-06-014, the Commission is considering in Phase Two of this proceeding whether to allow PG&E to adjust its revenue requirement to account for undercollections resulting from unrealized sales during PSPS events in 2019. The impact of D.21-06-14 will be considered in Phase Two, but will not be resolved here.

## **8. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Elaine Lau is the assigned Administrative Law Judge in this proceeding.

<sup>26</sup> D.21-06-014, Ordering Paragraph 1.

<sup>27</sup> Assigned Commissioner’s Amended Scoping Memo and Ruling at 4 (Phase Two, Issue #3).

**Findings of Fact**

1. For the 2019 record year, PG&E 1) prudently administered its energy resource contracts, 2) prudently managed its utility owned generation facilities and dispatched energy in a least cost manner, 3) procured greenhouse gas (GHG) compliance instruments in a manner that complies with its GHG Procurement Plan, as set forth in its Bundled Procurement Plan, and 4) procured and sold resource adequacy in a manner that complies with its Bundled Procurement Plan, Appendix S.

2. Except for the account adjustments expressly provided in the Settlement Agreement, the entries that PG&E recorded in the Energy Resources Recovery Account (ERRA) and Portfolio Allocation Balancing Account (PABA), as well as other balancing and memorandum accounts reviewed in this Application, are reasonable, appropriate, and accurate.

3. Article 12 of the Commission's Rules of Practice and Procedure addresses settlements. Rule 12.1(d) provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

4. The active parties in Phase One entered into a Settlement Agreement. These parties are PG&E, Cal Advocates, and JCCAs.

5. The Settlement Agreement resolves all but two disputed issues in Phase One of this proceeding.

6. Except for the terms specified in the Settlement Agreement, the Settling Parties request that the Commission approve the unopposed relief PG&E is requesting in Phase One.

7. The Settlement Agreement is unopposed.



8. The Settling Parties are knowledgeable, experienced in the issues examined, and are fairly representative of the interests affected in Phase One of this proceeding.

9. The Settling Parties reached agreement after submission of lengthy testimony, extensive discovery, careful analysis of issues, and settlement discussions.

10. The extensive evidentiary record developed in this proceeding contains sufficient information for the Commission to determine the reasonableness of the Settlement Agreement.

11. The Settlement Agreement demonstrates reasonable compromises between the Settling Parties' initial positions on the issues considered in the Settlement Agreement.

12. The extensive evidentiary record developed in this proceeding has provided sufficient showing that the rate changes resulting from the settled terms are just and reasonable and are consistent with Public Utilities Code Sections 451 and 454.

13. The Settlement Agreement contains prospective terms, particularly the provision for PG&E to provide and streamline additional information in future ERRA compliance proceedings.

14. The Commission has approved prospective terms in PG&E's past ERRA Compliance proceedings.

15. The Settlement Agreement's prospective terms are consistent with prior Commission precedent and comply with all applicable statutes.

16. The Settlement Agreement contains sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties and their interests and obligations.

17. The Settlement Agreement allows PG&E to recover power procurement costs at just and reasonable rates that are sufficient for PG&E to maintain safe and reliable service.

18. The Settlement Agreement allows more future collaboration between the parties to increase transparency and reporting of PG&E's procurement activities.

19. The Settlement Agreement avoids extensive litigation and conserves Commission resources and the resources of the parties through resolving most of the disputed issues in the proceeding.

20. The uncontested relief PG&E is requesting in Phase One are reasonable.

21. On March 30, 2020, PG&E filed an application for rehearing of D.20-02-047 to contest the method that the Commission used to calculate the RPS adjustment.

22. The arguments PG&E has presented in this proceeding on the matter of the appropriate calculation for the Retained RPS adjustment are similar to the arguments PG&E made in the application for rehearing on the same matter.

23. PG&E did not present any arguments or evidence in this proceeding that is different than the arguments and evidence it presented in the application for rehearing of the Retained RPS Adjustment matter.

24. On December 30, 2020, the Commission issued an Order Denying Rehearing of D.20-02-047, in which the Commission stated that the Decision did not err in its calculation of the Retained RPS adjustment.

25. The Retained RPS adjustment determined in D.20-02-047 was calculated using forecasted sales values rather than actual recorded values for three of the twelve months in 2019.

26. PG&E's actual recorded bundled retail sales in 2019, based on twelve months of recorded data, are 35,956 GWh.

27. The Retained RPS adjustment is \$95.3 million, which is calculated using twelve months of recorded bundled retail sales in 2019 and the calculation method approved in D.20-02-047.

28. Resolution E-5027 and Resolution E-5049 approved without modifications PG&E's Advice Letter 5607-E and Advice Letter 5658-E, respectively, including PG&E's requests to retain the existing cost recovery mechanisms for the Amended Power Purchase Agreements.

### **Conclusions of Law**

1. Phase One of PG&E's ERRA compliance application for the 2019 record year should be approved.
2. For the 2019 record year, PG&E complied with all the requirements that are reviewed during the ERRA compliance proceedings.
3. The Settlement Agreement is reasonable in light of the whole record.
4. The Settlement Agreement is consistent with statute and prior Commission decisions.
5. The Settlement Agreement is in the public interest.
6. The Settlement Agreement satisfied the requirements of Rule 12.1 and should be approved.
7. The parties' motion for adoption of the Settlement Agreement should be granted.
8. PG&E's unopposed requested relief in Phase One, except as specified in the Settlement Agreement, should be approved.
9. The Commission's Order denying PG&E's application to rehear D.20-02-047 confirmed that D.20-02-047 did not err in its calculation of the Retained RPS adjustment.
10. It is appropriate to use the actual recorded sales to determine the Retained RPS adjustment.

11. It is appropriate for PG&E to transfer \$95.3 million, in addition to any associated interest retroactive to January 2019, from the Portfolio Allocation Balancing Account (PABA) to the ERRR, as a result of updating the RPS adjustment ordered in D.20-02-047 with twelve months of actual 2019 recorded sales data.

12. By approving the existing cost recovery mechanisms for the amended Power Purchase Agreements, Resolution E-5027 and Resolution E-5049 approved retaining the existing vintages for the amended Power Purchase Agreements.

13. It is not appropriate to address the vintages of the amended Power Purchase Agreements in this current proceeding, because the Commission has addressed these issues in Resolution E-5027 and Resolution E-5049.

## O R D E R

### IT IS ORDERED that:

1. The *Settlement Agreement among Pacific Gas and Electric Company (U 39E), The Public Advocates Office at the California Public Utilities Commission and Joint Community Choice Aggregators*, attached as Appendix A to this decision, is approved.

2. Application 20-02-009, consistent with the terms set forth in the *Settlement Agreement among Pacific Gas and Electric Company (U 39E), The Public Advocates Office at the California Public Utilities Commission and Joint Community Choice Aggregators*, is approved, with the following exception:

- (a) PG&E shall transfer \$95.3 million, including any associated interests retroactive to January 2019, from the Portfolio Allocation Balancing Account to the Energy Resource Recovery Account, to update the Retained Renewables Portfolio Standard adjustment that was ordered in Decision 20-02-047 with actual 2019 recorded sales data.

3. Pacific Gas and Electric Company is authorized to recover \$3.996 million in revenue requirement for seismic study costs recorded in the Diablo Canyon Seismic Study Balancing Account.

4. Within 60 days of the issuance of this decision, Pacific Gas and Electric Company shall file a Tier 1 advice letter with Energy Division to implement this decision, which should include a report that it transferred \$95.3 million, including any associated interest retroactive to January 2019, from the Portfolio Allocation Balancing Account to the Energy Resource Recovery Account, as a result of updating the Retained Renewables Portfolio Standard adjustment with actual 2019 recorded sales data.

5. Phase One of Application (A.) 20-02-009 is concluded.

6. Application 20-02-009 remains open to consider issues in Phase Two.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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